II. REMARKS/ARGUMENTS

A. STATUS SUMMARY

Claims 3, 5-14 and 17-23 and 25-43 are pending in the application. Claims 27-33 are withdrawn from consideration as being directed to non-elected subject matter and claims 3, 5-14, 17-23, 25-28 and 34-43 stand rejected. Claims 3, 13, 14, 23, 34 and 37 are amended to more fully describe the invention.

B. CLAIM REJECTIONS – 35 USC § 112

Claims 3, 5-14, 17-22 and 34-43 stand rejected under 35 U.S.C. 112, second paragraph as being indefinite. In particular, the U.S.P.T.O maintains that although the claims recites the arm member is "coupled to the shaft", figure 5 indicates that the arm member is pivotably coupled to the interface section and only the interface section is movably coupled to the shaft. Applicants maintain that although the arm member may not be directly attached to the shaft, it may nevertheless be considered movably coupled to the shaft by virtue of the coupling of the arm member to the interface section. Accordingly, the claims are amended to more fully describe this relationship in claims 3 and 34 by the recitation "the interface section and the arm member via the interface section are movably coupled to the shaft" and in claims 13 and 14 by the recitation "the arm member coupled to the shaft via the interface section".

It is believed that the amendments to the claims obviate the rejection and reconsideration and withdrawal of the rejection is respectfully requested.

C. CLAIM REJECTIONS – 35 USC § 102(b)

Claims 23 and 25 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,588,543 (the '543 patent). Specifically, the '543 patent is alleged to disclose a loudspeaker system comprising, among other things, a mounting mechanism that includes an arm

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member (36) pivotable between a first and second position. The present invention, however, differs from what is disclosed in the '543 in that the arm member of the present invention is pivotable "about an axis generally orthogonal to the mounting direction" as is now recited in amended claim 23 and in claim 25 by dependency. In contrast to this, the "movable dog member 36" of the '453 patent, which is referenced by the U.S.P.T.O. as "arm member (36)", is pivotable about an axis corresponding to the mounting direction and not an axis orthogonal to the mounting direction (see FIGS. 1-3 of the '543 patent). Thus, the '543 patent does not disclose all of the elements of the amended claims as is required for anticipation.[1] Therefore, in view of the amendments to the claims, reconsideration and withdrawal of the rejection is respectfully requested.

D. CLAIM REJECTIONS – 35 USC § 103(a)

Claims 3, 5-14, 17-23, 25-26 and 34-43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,132,069 ("the '069 patent") in view of the '543 patent. This rejection is, in essence, based upon reasoning that a mounting mechanism for a lighting system is disclosed in the '069 patent and that mounting of a speaker system is disclosed in the '543 patent. Thus, it is reasoned that it would have been obvious to modify the system of the '543 patent to mount a speaker system as taught by the '069 patent as speakers and lightings are equivalently mounted to ceilings and wall structures.[2]

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[1] *EMI Group N. Am., Inc. v. Cypress Semiconductor Corp.*, 268 F.3d 1342, 1350 (Fed. Cir. 2001) ([t]o prove that a patent claim is anticipated by the prior art, a single prior art reference must contain, either explicitly or inherently, all of the elements of the claim); *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference).

[2] 7/05/2007 Office Action, page 3, last line through page 5, line 6.

Applicants respectfully traverse this rejection because no reason to combine the cited references has been explicitly stated by the U.S.P.T.O. and, indeed, there is no such reason to combine as is required to show that a combination is obvious.[3] The U.S.P.T.O. does state that "speakers, lights are well-known in the art and are in the same mounting environment;"[4] and that "speakers and lightings are equivalently mounted to ceilings and wall structures."[5] However, merely stating that the art references are in the same mounting environment and that speakers and lightings are equivalently mounted to ceilings and wall structures does not provide any explicit indication as to why one of ordinary skill in the art would in fact combine an art reference to a lighting system with an art reference to a speaker system.

Further, performing a Graham v. Deere analysis[6] of whether the combination is obvious shows the combination to be nonobvious. With respect to differences between the cited art and the claims at issue, the '069 patent discloses an embedded ceiling lighting device[7] that is not readily adaptable to a loudspeaker system as recited in the present claims. For example, the lighting device includes among other things, a reflection body 102, a socket fitting concave part

[3] The Supreme Court has stated that "it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense is already known." *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). The Supreme Court further indicated that with respect to whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue, the analysis should be made explicit. *KSR International* at 1740-1741, citing *In re Kahn*, 441 F.3d. 977, 988 (Fed. Cir. 2006)("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some underpinning to support the legal conclusion of obviousness").

[4] 7/05/2007 Office Action, sentence bridging pages 4 and 5.

[5] 7/05/2007 Office Action, page 5, lines 9-10.

[6] "Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances sur-rounding the origin of the subject matter sought to be patented." *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1, 17-18 (1966).

[7] '069 patent, column 2, lines 34-37.

110, a lamp socket 115, a bracket 117 all of which accommodates a lamp 129.[8] This structure that accommodates a lamp cannot be readily adapted to accommodate a loudspeaker in a loudspeaker system without major design changes. Further, the lighting device of the '069 patent is especially designed for ease in construction and installation, for example, by providing a light body mounting base that has a connection means for receiving, electrically connecting and mechanically supporting the connector of the light body which contains the lamp.[9] However, there are no corresponding mounting parts in the loudspeaker system of the present invention or in the mounting bracket for mounting a speaker system as disclosed in the '543 patent which is cited by the U.S.P.T.O. in combination with the '069 patent. Additionally, it is exhaustively repeated in the '069 disclosure that the embedded lighting device is intended for easy installation and simplified construction.[10] Thus, the relevant skill level is that of one skilled in the installation and/or construction of light fixtures or at most, one of ordinary skill in the designing of light fixtures. For such an individual converting the embedded light fixture of the '069 patent into a loudspeaker system would be beyond his or her abilities.[11] Thus, adapting the disclosure in the '069 patent to a loudspeaker system would not be within the skill of one of ordinary skill in the art.

Moreover, the engagement mechanism of the mounting bracket for mounting a speaker system as disclosed in the '543 patent is not readily adaptable to the engagement mechanism of the present invention. It is stated in the '543 patent that "[i]t is a further object of the present

[8] '069 patent, column 11, line 48 through column 12, line 42.

[9] *Id. see also* Column 16, line 40 to Column 17, line 35.

[10] Abstract, last line; column 2, lines 30-33; column 4, lines 4-12; column 5, lines 55-62; column 6, lines 16-24; column 6, lines 46-48; column 7, lines 6-7; column 7, lines 13-14; column 19, lines 20-24.

[11] The Supreme Court has indicated that a combination of elements by the skilled artisan may be obvious unless actual application is beyond his or her skill. *KSR International* at 1740.

invention to provide a bezel with a plurality of spring-loaded dog assemblies for providing rapid installation and clamping means to a wall or ceiling while simultaneously projecting baffle screws for accommodating a baffle installation."[12] Thus, the engagement mechanism of the '543 is intentionally designed to have an axis for arm member rotation that is the same as that for the attachment mechanism for baffle installation and that axis is along the mounting direction rather than orthogonal to the mounting direction as is the case for the axis of arm member rotation for the present invention. Hence the design teachings of the '543 patent are inconsistent with the loudspeaker system of the present invention and the disclosure in the '543 patent is not readily adaptable to arrive at the invention as claimed. These design inconsistencies of the '543 patent and the present invention and those discussed above in connection with the '069 patent constitute teachings away from the present invention as claimed, showing the present invention to be nonobvious over the '069 and '543 patents either alone or taken in combination.[13]

For all of the reasons discussed above, the invention as claimed is nonobvious over the disclosure in the '069 patent in view of the '543 patent. Reconsideration and withdrawal of the rejection is, therefore, respectfully requested.

E. CONCLUSION

In view of the amendments to the claims and the remarks above, it is believed that the claims are in a condition for allowance and such favorable consideration is respectfully requested. Should any questions arise or if any additional issues remain, the U.S.P.T.O. is requested to contact the undersigned attorney.

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[12] '543 patent, column 3, lines 17-22.
[13] *See KSR International* at 1740.

PATENT
Atty Docket No. HI02001USU1 (P01018USU1)
Serial No. 10/632,433

The Commissioner is authorized to charge any additional fees that may be required, or credit any overpayment, to our Deposit Account No. 50-2542. A copy of this sheet is enclosed.

Respectfully submitted,

Dated: 9/5/07

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PATENT
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